

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

YAMAMOTO MITCHELL and
WALTER MITCHELL,

Plaintiffs,

v.

METCO, INC., MEMHET HAZIRLAR,
and J. RICHARD PECK,

Defendants.

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CIVIL ACTION NO. H-04-2444

MEMORANDUM AND ORDER

Pending before the Court is Plaintiff Yamamoto Mitchell's Motion for Reconsideration and/or for New Trial (Doc. No. 39). In this Court's Memorandum and Order of November 1, 2006, Yamamoto Mitchell's claims for unpaid wages were dismissed because he apparently assigned his wage claim to a third-party, and wage assignments are generally valid and enforceable. Although Mitchell allegedly did not receive the payment that was promised him by the assignee, the Court explained that Mitchell's remedy would be to pursue a breach of contract claim against the assignee.

However, Plaintiff has brought to this Court's attention a line of cases holding that assignments of wage claims are valid and enforceable *unless* there was "fraud or overreaching" on the part of the assignee. *Caparelli v. Proceeds of Freight*, 390 F. Supp. 1351, 1356 (S.D.N.Y. 1974); *The President Arthur*, 25 F.2d 999, 1000 (S.D.N.Y. 1928); *The Bethlehem*, 286 F. 400, 402 (E.D. Pa. 1923). In all of these cases, the assignees were allowed to enforce the wage assignments because they had paid the crew's wages in full. In this case, however, Yamamoto

Mitchell was allegedly not paid his wages in full by the assignee. At a minimum, this raises a question of fact as to whether there was fraud or overreaching on the part of Mitchell's assignee.

Thus, Plaintiff's motion for reconsideration is **GRANTED**. Yamamoto Mitchell is entitled to a bench trial on the issue of whether his wage claim assignment was procured by fraud or overreaching. If the Court concludes that it was, then Mitchell will also be entitled to a bench trial on the merits of his wage claim.

Trial is set for 8:30 a.m. on **Thursday, August 9, 2007**.

IT IS SO ORDERED.

SIGNED this 7th day of June, 2007.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT